

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:14-CR-44-FL-2
NO. 7:16-CV-197-FL

QUALIK HASSAN TISDALE,)
)
Petitioner,)
)
v.) ORDER
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

This matter is before the court on petitioner's motion to vacate sentence under 28 U.S.C. § 2255 (DE 104), and the government's motion to dismiss, (DE 110), to which no response was filed. Although petitioner asserts a claim pursuant to Johnson v. United States, 135 S.Ct. 2251 (2015), petitioner's guidelines base offense level properly was enhanced on the basis of a prior felony conviction of a controlled substance offense, the application of which was not impacted by Johnson. (See DE 62 ¶¶ 20, 50). In addition, petitioner procedurally defaulted on this claim by failing to challenge his guidelines base offense level on direct review. See United States v. Frady, 456 U.S. 152, 167 (1982). Accordingly, the government's motion to dismiss is GRANTED, and petitioner's motion to vacate is DENIED. After reviewing the claims presented on collateral review in light of the applicable standard, see 28 U.S.C. § 2253(c)(2), the court DENIES a certificate of appealability. The clerk is DIRECTED to close this case.

SO ORDERED, this the 26th day of October, 2016.


LOUISE W. FLANAGAN
United States District Judge